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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,072	07/24/2003	Larry Bone	02280.003270	3104
5514	7590	01/11/2006	EXAMINER	
FITZPATRICK CELLA HARPER & SCINTO 30 ROCKEFELLER PLAZA NEW YORK, NY 10112			ELKINS, GARY E	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 01/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

TAK

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/627,072	BONE, LARRY	
	Examiner	Art Unit	
	Gary E. Elkins	3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 03 October 2005.

2a) This action is **FINAL**.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-21 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) 12-20 is/are allowed.

6) Claim(s) 1-11 and 21 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)

2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_

5)  Notice of Informal Patent Application (PTO-152)

6)  Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. Claims 1-11 and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, next to the last line, “the front panel flap disposed on said side panel” is unclear since, as set forth in claim 1, line 9, each of the front panel flaps is defined on an inner side of both of the side panels. Also, “said side panel” in the last line is unclear since a plurality of side panels were previously set forth.

In claim 3, “a top panel” appears to be a double inclusion of an element since the top panel referred to appears to be the optional top panel set forth in claim 1. It is also unclear what top panel is being referred to in claims 4-6, i.e. the optional top panel set forth in claim 1 or the top panel in claim 3.

The last three lines of claim 1 render claim 1 unclear with respect to what is being claimed. In the completed carton, the sidearms, as shown in the drawings, are located between the side panels and the front panel flaps. The recitation that they are “capable of interleaving...” implies that some other intermediate product, e.g. the blank is being claimed as opposed to the carton.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-4 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Desmond (fig. 11 emb) in view of Buford. Desmond discloses an access panel 32, sidearms 42, a bottom panel 19, side panels 46, front access opening (formed by a portion of front panel 22 when opened), front panel flaps 34 and top panel or covering 17. Desmond does not disclose a lip accommodation panel on an inner side of the front panel and hinged to the access panel. Buford teaches that it is known to form a lip accommodation panel 48 connected to an access panel 50 and located behind a portion 31 of a front panel to space the access panel upwardly from the bottom. It would have been obvious to make the carton of Desmond with a lip accommodation panel positioned on the inside of the front panel as taught by Buford to space the access panel upwardly from the bottom.

4. Claims 1-4, 8 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aaron in view of Buford. Aaron discloses an access panel 10, sidearms 11, a bottom panel 20, side panels 32, front access opening A, front panel flaps 22 and top panel or covering 16. Aaron does not disclose a lip accommodation panel on an inner side of the front panel and hinged to the access panel. Buford teaches that it is known to form a lip accommodation panel 48 connected to an access panel 50 and located behind a portion 31 of a front panel to space the access panel upwardly from the bottom. It would have been obvious to make the carton of Aaron with a lip accommodation panel positioned on the inside of the front panel as taught by Buford to space the access panel upwardly from the bottom.

5. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 in either paragraph 4 or 5 above, and further in view of either Scherr or

Valiulis. Each of modified Desmond and modified Aaron fails to disclose a means for affixing the carton to a surface. Each of Scherr and Valiulis teaches that it is known to make a display dispensing carton with means (hook and loop fasteners; holes to receive a hanging rod, respectively) to affix the container to a surface during use. It would have been obvious to make the container of Desmond or Aaron with means to affix the container to a surface as taught by either Scherr or Valiulis to allow easier display and use of the container, e.g. in a store.

6. Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 3 in either paragraph 4 or 5 above, and further in view of Ours et al. Each of modified Desmond and modified Aaron fails to disclose a holding means on the sidearm to hold the access panel in a predetermined open position. Ours et al teaches that it is known to make sidearms with holding means formed by the notches adjacent the projections 38 to hold the access panel in a predetermined open position. It would have been obvious to make the sidearms in either Desmond or Aaron with holding means as taught by Ours et al to prevent the access panel from inadvertently returning to a closed position.

***Allowable Subject Matter***

7. Claims 5, 6 and 21, as best understood in view of paragraph 1 above, would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

8. Claims 12-20 would be allowable if rewritten or amended to overcome the claim objection set forth in this Office action.

***Response to Arguments***

9. Applicant's arguments filed 03 October 2005 have been fully considered but they are not persuasive.

The remarks assert that neither Desmond or Aaron discloses a top opening which is formed by an openable or an open top and a continuation of the top opening formed by the front access panel, i.e. neither Desmond or Aaron suggest making the front access opening continuous with either an open top or an opening formed by a removable top panel.

In response, it is agreed that nothing within the prior art suggests making a carton with a panel/flap construction as set forth in new claim 21. As such, claim 21, as best understood, has been indicated as allowable over the prior art of record. Claim 1, however, is not limited to the construction being argued in the remarks, i.e. claim 1 is not exclusive of a construction where the top panel is formed as in either Desmond or Aaron. The fact that the top panel is claimed as optional does not limit the claim to either no top panel at all or the top panel recited. Other top panel constructions inclusive of those present within Desmond or Aaron are encompassed by this claim.

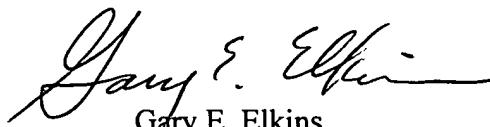
***Conclusion***

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.



Gary E. Elkins  
Primary Examiner  
Art Unit 3727

gee  
08 January 2006